Supreme Court, U.S.
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No. 02 - 1818

IN THE
SUPREME COURT OF THE UNITED STATES

ALVIN S.KANOFSKY, PhD.,and DANIEL KANOFSKY, M.D.,M.P.H, individually and as joint executors of the ESTATE OF PAUL KANOFSKY, Ph.D., and as joint executors of the ESTATE OF PHILIP KANOFSKY,

Petitioners

Dr. ALVIN S. KANOFSKY - PETITIONER

Vs.

UNIVERSITY OF MEDICINE AND DENTISTRY of NEW JERSEY,LESLIE P. MICHELSON, Ph.D., RICHARD CALMAN, JERRY YORK,RON NAPIORSKY, STANLY S. BERGEN, JR., HOWARD J. PRIPAS, MARILYN BODOW, PRUDENTIAL INS. CO., AND JOHN DOE(S),individually and in their official capacities

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES 3RD CIRCUIT COURT OF APPEALS, ENTERED IN PHILADELPHIA, PA., NO. 01-2860.

DR. ALVIN S. KANOFSKY
229 E. CHURCH STREET
BETHLEHEM, PA. 18018
610 – 867 – 8064

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Response to new questions raised by Respondents, who took issue with Petitioners original questions in Petition and thus ignored Petitioner's questions.

We present below both sets of questions.

Respondents New Questions:

1.Did the Court of Appeals correctly affirm the District Court's dismissal of the Estate of Paul Kanofsky's claims for handicap and disability discrimination for failing to establish the prima facie elements and for failing to establish that the reasons cited by Respondents for the adverse employment actions were a pretext for discrimination?

2.Did the Court of Appeals correctly affirm the District Court's dismissal of the Estate of Paul Kanofsky's claims for age discrimination for failing to establish the prima facie elements and failing to establish that the reasons cited by Respondents for the adverse employments actions were a pretext for discrimination?

3. Did the Court of Appeals correctly affirm the District Court's dismissal of the Estate of Paul Kanofsky state law claim for the intentional infliction of emotional distress for failing to establish the elements for such claim?

Petitioner's Original Questions(Without supporting comments.)

1. Did Judge Debevoise of the Third Circuit Court and the Third Circuit Court of Appeals ignore arguments in favor of Dr. Kanofsky being able to perform his duties?

2. Did Judge Debevoise of the Third Circuit and the Third Circuit Court of Appeals ignore arguments in consideration of his disabilities?

3. Did Judge Debevoise of the Third Circuit Court and the Third Circuit Court of Appeals totally disregard consideration of the facts?

4. Did Judge Debevoise of the Third Circuit Court and the The Third Circuit Court of Appeals ignore arguments in the brutal firing of Dr. Kanofsky, first in the initial termination meeting and then totally ignoring mitigating circumstances of coming off a sick bed after cancer chemotherapy to appeal his firing from the first meeting.

5. Has Dr. Kanofsky's competency been subsequently vindicated?

6. Has Dr. Kanofsky's Whistle Blowing Activities been subsequently vindicated?

7. Should Justice Rendell have recused herself from the case?

8. Does the Federal Justices consistent dismissal of ADA and ADEA act lawsuits constitute cruel and unusual punishment to those wrongfully discharged and their families? The victims and families are twice victimized?

We might add another question to those in the original petition that are stated above:

9. Given the present national turmoil in the health care system, the current problems with Medicaid and Medicare, the relevance of this case on the administration of health care institutions, and the interplay of Medicare and Medicaid with these institutions, as well as other aspects of the case, could this case prove to be one of the most important to ever appear before the Supreme Court?

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RESPONSE TO RESPONDENT:

Attorney Dauber (and presumably the Appellees) continue to ignore the facts of the case, and in addition, the eight questions raised by the petitioner in regard to the case. Attorney Dauber states that he takes issue with the questions raised by the petitioner, and he does in no way address the questions – thus validating them by his lack of rebuttal.

He instead continues to insist that Dr. Paul Kanofsky was terminated for valid reasons and that the petitioners had not established a prima facie case:

1. Dr. Kanofsky was terminated because he was unable to perform his duties.

2. Dr. Kanofsky was adequately trained.

3. Dr. Kanofsky did not request an accommodation for his disability and (in the case of age discrimination)

4. Dr. Kanofsky was not replaced by a younger worker.

5. In the count of Wrongful Death, Dr. Kanofsky was not treated in a malicious manner to bring about his death due to proximate causes from their treatment

These arguments continue to be erroneous since they are based on incorrect alleged facts accepted by the District Court Judge Debevoise, and not even considered by the appeals court. Once these erroneous facts are accepted, Attorney Dauber argues that the Supreme Court has no jurisdiction on lower courts misrepresenting and ignoring the factual situation.

Actually, Attorney Dauber and the appellees arguments further support our case. We consider each of their supposedly prima facie elements.

1. In his arguments in support of the first element – Dr. Kanofsky was terminated because he was unable to perform his duties- he focuses primarily on Dr. Kanofsky's lack of knowledge of DOS, the Microsoft PC Disc Operating System. In fact, only a very small portion of Dr. Kanofsky's duties involved the use of DOS. His primary duties , eighty percent of his time, was on performing statistical analysis of Medical Experiments. Where Attorney Dauber and the appellees do consider his statistical duties, they refer to his being late in completing his assignments. Numerous testimony was given that Dr. Kanofsky was working late weekdays and through the weekends to complete his statistical programming assignments. The deadlines he was given were totally unrealistic in order to perform competent

complete statistical analysis of the data, again as stated in numerous instances by expert witnesses, such as Dr. Thaler and Dr.Roberts and other co-workers knowledgeable in statistics such as Mr. Marty Feuerman and Mr. Gil Cohen.Their complaint of the inability to complete assignments on time reflect the ignorance of his supervisors as to the proper statistical techniques needed to analyze the data.

Even with DOS, there was numerous testimony by many, including his immediate supervisor, Patrice Gregory, that his DOS skills were adequate and improving.

2.With respect to the second Prima Facie Element – that Dr. Kanofsky was adequately trained- again Attorney Dauber supports our case. He states that Dr. Kanofsky was given all of one month of training in DOS. This is a ridiculously short amount of time to learn a system as complicated as DOS. As given in testimony taken during deposition, for example by Marty Feuerman, it requires years to become expert in DOS. As well, the training was given sporadically, and in no formal organized way, mainly by his immediate supervisor, Patrice Gregory. As well, it was given during a period when Dr. Kanofsky was suffering from severe mental depression, for which he was subsequently out for a period of months under a psychiatrist's care. This was well documented in

depositions. Attorney Dauber and the appellees totally and conveniently ignore the mental disability aspect of the case. Of course, as is well known, one of the symptoms of mental depression is the inability to learn and concentrate.

3. For the third aspect of the Prima Facie Case - that Dr. Kanofsky did not request an accommodation for his disability- Attorney Dauber again supports our case. Dr. Kanofsky frequently requested more time to complete his installations of SAS, the statistical analysis program. As well, he requested more time to complete his statistical analysis duties. As Attorney Dauber states, due to his physical disability, he did inadvertently shut off the computer because of lack of co-ordination in installing the disks. It was obvious that the physical disability was impairing his duties.

As to his mental disabilities, he did request time to be out on sick leave with notes from his psychiatrist. Upon his return, his supervisors heaped numerous tasks on him immediately, to further break him down. During the final termination hearing on October 28, he and the union representative, Nina Jackowitz, asked for accommodations for his disability, and for sick leave for his cancer which was evident to everyone

present by the swollen lymph nodes in his neck.

4.In regard to the fourth prima facie element- that Dr. Kanofsky was not replaced by a younger worker -again Attorney Dauber supports our case, by admitting that it was several years after Dr. Kanofsky left his first position till they hired more people – in fact they hired tens of people , many of them much younger than Dr. Kanofsky. Dr. Kanofsky was the only individual transferred out the department, even though as Attorney Dauber admits it took two years for them to replace the programs that Dr. Kanofsky was expert in. This was as well, a period when many institutions were fraudulently up-coding, and thus it would have been also essential to move Dr. Kanofsky, an honest and ever vigilant watchdog of the billing systems out of his position in order for these methods to be practiced undetected. Dr. Kanofsky had previously discovered errors in billing that resulted in the university recovering over $50 Million dollars, something that Attorney Dauber conveniently omits.

As well, Attorney Dauber omits any mention of the fact that the University of Medicine and Dentistry is being totally restructured as a result of its being judged to be mediocre in quality by the Governor's prestigious committee of experts . UMDNJ will be merged

into Rutgers and New Jersey Institute of Technology(NJIT), with the administration moved to Trenton, thus vindicating Dr. Kanofsky's pursuit of excellence and honesty.

5 Finally, in the final element of the prima facie case - Wrongful Death - Attorney Dauber presents the brutal malicious way in which they handled Dr. Kanofsky's, termination hearing on October 28, 1994, and then his final appeal hearing on December 6. Dr. Kanofsky during this period was dying from lymphoma, cancer of the lymph glands. This was most probably initially brought on by the stress of his job. On October 28, the day of the termination hearing, he was threatened that they would fight tooth and nail to cut off any benefits unless he signed a waiver that he would not sue the university. Dr. Kanofsky refused, and they subsequently acted to cut off all benefits that he might obtain. At that hearing, the union representative and Dr. Kanofsky made it known to those present that he was going in the next day for a biopsy to detect cancer. He had enormous lumps in his throat, and it was evident to everyone that he was seriously ill. The union representative, Nina Jackowitz, pleaded that they put Dr. Kanofsky on sick leave and not terminate him at this time, thus requesting another accommodation. Dr. Kanofsky refused to sign the waiver, and he left that meeting severely depressed by his treatment and the

termination. He subsequently entered the hospital, cancer was detected , and he spent weeks in Jefferson hospital in Philadelphia receiving chemotherapy. He came out of the hospital shortly before the December 6 appeal hearing , even though he was deathly ill. He should not have been allowed to attend the hearing, given the state of health he was in. The union representative present, Michael Slott, testified that Paul did not seem himself, his mental processes were slow and distracted as one would expect for someone coming immediately from a hospital sickbed where he had received intense chemotherapy. As Attorney Dauber states, he was asked one question on DOS, which Dr. Kanofsky did not answer correctly, and with that the hearing officer ended the hearing and declared that he was indeed terminated. I doubt if anyone could have answered the question in the same physical state as Dr. Kanofsky. Dr. Kanofsky left that hearing severely despondent. The following day, he appeared at the office of a Prudential Agent in New Jersey, Robert Cohen, attempting to get his insurance policy transferred. Mr. Cohen, in depositions, described Dr. Kanofsky at that meeting as being in a very sick and weakened state, leaving his discussion with Mr. Cohen frequently to go to the bathroom. Dr. Kanofsky filled out the necessary forms, but he could not make a decision on the beneficiary amount, and he left the forms unsigned.

Dr. Kanofsky was next seen by the plaintiff's cousin that evening ,having dinner at a restaurant in Northeast Philadelphia. He was not seen alive after that. The plaintiffs did not hear from him for several days. Finally, Dr. Daniel Kanofsky forced his way into Dr. Kanofsky's apartment, and found him lying dead on his bed. He apparently had bled to death. In depositions, his Oncologist, Dr. Rose, stated that stomach bleeding was most likely brought on by the aggravation of that final appeal hearing, acting in conjunction with the chemotherapy treatment. It was a brutal malicious final treatment of a dedicated employee, resulting in his death.

Finally, we repeat the questions we raised in our petition to the Supreme Court.

1. Did Judge Debevoise of the Third Circuit Court and the Third Circuit Court of Appeals ignore arguments in favor of Dr. Kanofsky being able to perform his duties?

2. Did Judge Debevoise of the Third Circuit and the Third Circuit Court of Appeals ignore arguments in consideration of his disabilities?

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9. Given the present national turmoil in the health care system, the current problems with Medicaid and Medicare, the relevance of this case on the administration of health care institutions, and the interplay of Medicare and Medicaid with these institutions, as well as other aspects of the case, could this case eventually prove to be one of the most important ever to appear before the Supreme Court?

CONCLUSION:

In conclusion, based on numerous considerations of law and concerns of national public policy as stated above and in more detail in the original petition, petitioners pray that the Supreme Court will consider this case at this time.

Respectfully submitted:

Alvin S. Kanofsky

Dr. Alvin S. Kanofsky

Date: 9/25/03